

2009 - 2010 LEGISLATURE

142
LRB-0086/P1

MGG:kjf:ph

O-Note

~~Mon~~

today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to repeal* 101.123 (1) (am), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1)
2 (dg), 101.123 (1) (gm), 101.123 (1) (j), 101.123 (2) (a) 5., 101.123 (2) (am), 101.123
3 (2) (b), 101.123 (3) (a) to (gr), 101.123 (4), 101.123 (5), 101.123 (8) (b) and
4 101.123 (8) (c); *to renumber* 101.123 (1) (a) and 101.123 (2) (c); *to renumber*
5 *and amend* 101.123 (1) (h), 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2)
6 (bm), 101.123 (2) (br) and 101.123 (2) (bv); *to amend* 77.52 (2) (ag) 39. (intro.),
7 101.123 (1) (ar), 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f),
8 101.123 (1) (g), 101.123 (1) (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.),
9 101.123 (6), 101.123 (7), 101.123 (8) (a), 165.60, 165.755 (1) (b), 302.46 (1) (a),
10 460.01 (5), 757.05 (1) (a) and 814.63 (1) (c); *to repeal and recreate* 101.123 (2)
11 (title), 101.123 (2) (a) 4., 101.123 (2) (a) 6. and 101.123 (2) (a) 9.; and *to create*
12 101.123 (1) (ab), 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj), 101.123 (1)
13 (bn), 101.123 (1) (bv), 101.123 (1) (dj), 101.123 (1) (dn), 101.123 (1) (h) 2.,
14 101.123 (1) (hm), 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 2m., 101.123
15 (2) (a) 2r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123

arenas

(2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.), 101.123 (2) (e), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3) (j), 101.123 (3) (k), 101.123 (3) (L), 101.123 (3m), 101.123 (8) (d) and 101.123 (8) (e) of the statutes; **relating to:** prohibiting smoking in places of employment, restaurants, taverns, and other indoor areas, and sport areas, and providing a penalty.

in public conveyance and

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long-term care facilities, as defined under s. 16.009 (1) (em), state institutions ~~prisons~~, as defined under s. 101.123 (1) (i), ~~and~~ mental health institutes, as defined in s. 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities including, by way of illustration but not of limitation, all of the following:

SECTION 2. 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

SECTION 3. 101.123 (1) (ab) of the statutes is created to read:

101.123 (1) (ab) "Assisted living facility" means a community-based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

1 **SECTION 4.** 101.123 (1) (ab) of the statutes is created to read:

2 101.123 (1) (ab) “Assisted living facility” means means a community-based
3 residential facility as defined in s. 50.01 (1g), a residential care apartment complex
4 under s. 50.01 (1d), or an adult family home under s. 50.01 (1) (b).

5 **SECTION 5.** 101.123 (1) (ac) of the statutes is created to read:

6 101.123 (1) (ac) “Correctional facility” means any prison, juvenile correctional
7 facility, or any other correctional facility that is used to incarcerate persons convicted
8 of crimes or adjudged delinquent but does not include a facility that is the private
9 residence in which the incarcerated person is placed and at which no one is employed
10 to insure the person’s incarceration.

→ INS
3-10

11 **SECTION 6.** 101.123 (1) (aj) of the statutes is created to read:

12 101.123 (1) (aj) Notwithstanding s. 101.01 (5), “employment” means any trade,
13 occupation, or process of manufacture or any method of carrying on such trade,
14 occupation, or process of manufacture in which any person may be engaged.

15 **SECTION 7.** 101.123 (1) (am) of the statutes is repealed.

16 **SECTION 8.** 101.123 (1) (ar) of the statutes is amended to read:

17 101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area
18 directly adjacent to the state capitol building, as determined by rule of the
19 department of administration. “Immediate vicinity of the state capitol” does not
20 include any location that is more than one fathom six feet from the state capitol
21 building.

22 **SECTION 9.** 101.123 (1) (b) of the statutes is amended to read:

23 101.123 (1) (b) “Inpatient health care facility” means a hospital, as defined in
24 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
25 under s. 49.72 ~~or a community-based residential facility or, a nursing home licensed~~

1 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a
2 Wisconsin veteran's home under s. 45.50, or a treatment facility.

3 **SECTION 10.** 101.123 (1) (bn) of the statutes is created to read:

4 101.123 (1) (bn) "Lodging establishment" means any of the following:

5 1. A bed and breakfast establishment, as defined in s. 254.61 (1).

6 2. A hotel, as defined in s. 254.61 (3).

7 3. A tourist rooming house, as defined in s. 254.61 (6).

8 **SECTION 11.** 101.123 (1) (br) of the statutes is repealed.

9 **SECTION 12.** 101.123 (1) (bv) of the statutes is created to read:

10 101.123 (1) (bv) "Multifamily dwellings" means groups of apartments or
11 condominiums, rowhouses, or town houses.

12 **SECTION 13.** 101.123 (1) (c) of the statutes is repealed.

13 **SECTION 14.** 101.123 (1) (d) of the statutes is amended to read:

14 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
15 ultimately controls, governs or directs the activities, aboard a public conveyance or PLAIN
16 within a place at a location where smoking is prohibited or regulated under this
17 section, regardless of the person's status as owner or lessee.

18 **SECTION 15.** 101.123 (1) (dg) of the statutes is repealed.

19 **SECTION 16.** 101.123 (1) (dj) of the statutes is created to read:

20 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
21 any indoor area that employees normally frequent during the course of employment,
22 including an office, a work area, ^{an elevator,} an employee lounge, a restroom, a conference room,
23 a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle,
24 or ^{an employee} a cafeteria ~~that is provided by the employer.~~

25 **SECTION 17.** 101.123 (1) (dn) of the statutes is created to read:

SECTION 17. ^{RN} 101.123 ⁽¹⁾ (dm); 77.51 (11m)

1 101.123 (1) (dn) "Private club" means an organization that limits its
2 membership and is organized for a recreational, fraternal, social, patriotic, political,
3 benevolent, or athletic purpose.

4 **SECTION 18.** 101.123 (1) (e) of the statutes is amended to read:

5 101.123 (1) (e) "Public conveyance" means a mass transit vehicles vehicle as
6 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
7 or and any other devices ^{device} by which persons are transported, for hire, on a highway or by
8 rail, water, air, or guidewire within this state, but does not include such a device
9 while providing transportation in interstate commerce.

10 **SECTION 19.** 101.123 (1) (f) of the statutes is amended to read:

11 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
12 with a seating capacity of more than 50 persons.

13 **SECTION 20.** 101.123 (1) (g) of the statutes is amended to read:

14 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
15 sales is the principal business conducted, except a tavern operating under a "Class
16 B" intoxicating liquor license or Class "B" fermented malt beverages license, and
17 except bowling centers.

18 **SECTION 21.** 101.123 (1) (gm) of the statutes is repealed.

19 **SECTION 22.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
20 and amended to read:

21 101.123 (1) (h) (intro.) "Smoking" means carrying any of the following:

22 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
23 smoking equipment containing tobacco products.

24 **SECTION 23.** 101.123 (1) (h) 2. of the statutes is created to read:

SECTION 23. CR; 101.123 (1) (eg)
101.123 (1) (eg) ^{"Public place"} means a place that is open to the
public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.

spectator sporting events

101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette, pipe, or other lighted smoking equipment containing tobacco products.

SECTION 24. 101.123 (1) (hm) of the statutes is created to read:

101.123 (1) (hm) "Sports arena" means any ~~enclosed~~ stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where athletic events are held regardless of whether the area has a permanent or retractable roof.

SECTION 25. 101.123 (1) (i) of the statutes is amended to read:

101.123 (1) (i) "State institution" means ~~a prison~~, a mental health institute, as defined in s. 51.01 (12), ~~or a center for the developmentally disabled, as defined in s. 51.01 (3)~~ *or a secure mental health facility for at which persons are committed under s. 980.06.*

SECTION 26. 101.123 (1) (im) of the statutes is created to read:

101.123 (1) (im) "Tavern" means an establishment, other than a restaurant, that holds a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license.

SECTION 27. 101.123 (1) (ip) of the statutes is created to read:

101.123 (1) (ip) "Treatment facility" means a publicly or private operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

SECTION 28. 101.123 (1) (j) of the statutes is repealed.

SECTION 29. 101.123 (2) (title) of the statutes is repealed and recreated to read:

101.123 (2) (title) PROHIBITION AGAINST SMOKING.

SECTION 30. 101.123 (2) (a) (intro.) of the statutes is amended to read:

101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in ~~any~~ any of the following indoor places:

X SECTION. *RP; 101.123 (2) (a) 1.*

*(owned or operated by
a college or university)*

1 SECTION 31. 101.123 (2) (a) 2m. of the statutes is created to read:

2 101.123 (2) (a) 2m. Residence halls or dormitories of educational facilities.

3 SECTION 32. 101.123 (2) (a) 2r. of the statutes is created to read:

4 101.123 (2) (a) 2r. Day care centers.

5 SECTION 33. 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

6 101.123 (2) (a) 4. Theaters except as provided in sub. (3) (L).

7 SECTION 34. 101.123 (2) (a) 5. of the statutes is repealed.

8 SECTION 35. 101.123 (2) (a) 5m. of the statutes is created to read:

9 101.123 (2) (a) 5m. Lockup facilities, jails, or correctional facilities.

10 SECTION 36. 101.123 (2) (a) 5t. of the statutes is created to read:

11 101.123 (2) (a) 5t. State institutions.

12 SECTION 37. 101.123 (2) (a) 6. of the statutes is repealed and recreated to read:

13 *Change component* 101.123 (2) (a) 6. Elevators.

14 SECTION 38. 101.123 (2) (a) 7m. of the statutes is created to read:

15 101.123 (2) (a) 7m. Taverns.

16 SECTION 39. 101.123 (2) (a) 7r. of the statutes is created to read:

17 101.123 (2) (a) 7r. Private clubs.

*(multiple-unit residential
properties.)*

18 SECTION 40. 101.123 (2) (a) 8d. of the statutes is created to read:

19 101.123 (2) (a) 8d. Common areas of multifamily dwellings.

20 SECTION 41. 101.123 (2) (a) 8g. of the statutes is created to read:

21 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

22 SECTION 42. 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

23 101.123 (2) (a) 9. Any indoor place, other than the places listed in subds. 1. to

24 8r., that is a place of employment or that is ~~open to the public or to which the public~~

25 ~~has lawful access or may be invited.~~ *a public place*

1 **SECTION 43.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
2 and amended to read:

3 PLAIN 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~
4 village, ~~or and~~ town building buildings.

5 **SECTION 44.** 101.123 (2) (am) of the statutes is repealed.

6 **SECTION 45.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
7 amended to read:

8 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
9 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

10 **SECTION 46.** 101.123 (2) (b) of the statutes is repealed.

11 **SECTION 47.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
12 and amended to read: On

13 g 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
14 ~~Outside on~~ On the premises, indoors or outdoors, of a day care center when children who
15 are receiving day care services are present.

16 **SECTION 48.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
17 amended to read:

18 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
19 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
20 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

21 **SECTION 49.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
22 amended to read:

23 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
24 in A location that is 25 feet or less from a residence hall or dormitory that is owned

1 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
2 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

3 **SECTION 50.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

4 **SECTION 51.** 101.123 (2) (d) (intro.) of the statutes is created to read:

5 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
6 locations:

7 **SECTION 52.** 101.123 (2) (e) of the statutes is created to read:

8 101.123 (2) (e) No person may smoke in a sports arena.

9 **SECTION 53.** 101.123 (2m) of the statutes is created to read:

10 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
11 may allow any person to smoke in violation of sub. (2) at a location that is under the
12 control or direction of the person in charge.

13 (b) No person in charge may provide matches, ashtrays, or other equipment for
14 smoking at the location where smoking is prohibited.

15 (c) A person in charge shall make reasonable efforts to prohibit persons from
16 smoking at a location where smoking is prohibited by doing all of the following:

17 1. Posting signs setting forth the prohibition and providing other appropriate
18 notification and information concerning the prohibition.

19 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
20 or private club.

21 3. Asking a person who is smoking to refrain from smoking and, if the person
22 refuses to do so, asking the person to leave the location.

23 (d) If a person refuses to leave a location after being requested to do so as
24 provided in par. (c) 3., the person in charge shall immediately notify an appropriate
25 law enforcement agency of the violation. ✓

SECTION 54. CR; 101.123 (2) (f)
101.123 (2) (f) No person may smoke in a public
conveyance.

1 (e) A person in charge may take measures in addition to those listed in pars.
2 (b) and (c) to prevent persons from being exposed to others who are smoking or to
3 further ensure compliance with this section.

4 **SECTION 54.** 101.123 (3) (intro.) of the statutes is amended to read:

5 101.123 (3) EXCEPTIONS. (intro.) The ~~regulation of prohibition against~~ smoking
6 in sub. (2) (a) does not apply to the following places:

7 **SECTION 55.** 101.123 (3) (a) to (gr) of the statutes are repealed.

8 **SECTION 56.** 101.123 (3) (h) of the statutes is created to read:

9 101.123 (3) (h) A private residence.

10 **SECTION 57.** 101.123 (3) (i) of the statutes is created to read:

11 101.123 (3) (i) A room used by a person in an assisted living facility as his or
12 her residence.

13 **SECTION 58.** 101.123 (3) (j) of the statutes is created to read:

14 101.123 (3) (j) A room in an assisted living facility in which 2 or more persons
15 reside if every person who lives in that room smokes and each of those persons has
16 made a written request to the person in charge of the assisted living facility to be
17 placed in a room where smoking is allowed.

18 **SECTION 59.** 101.123 (3) (k) of the statutes is created to read:

19 101.123 (3) (k) A room in a lodging establishment that has been designated as
20 a room where smoking is allowed, as provided under sub. (3m).

21 **SECTION 60.** 101.123 (3) (L) of the statutes is created to read:

22 101.123 (3) (L) Any stage of a theater when the stage is being used for a
23 theatrical performance and the smoking is part of the performance.

24 **SECTION 61.** 101.123 (3m) of the statutes is created to read:

1 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging
2 establishment may designate not more than 25 percent of the guest rooms in the
3 lodging establishment as guest rooms in which smoking is permitted.

4 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
5 establishment may designate one guest room as a guest room in which smoking is
6 permitted.

7 **SECTION 62.** 101.123 (4) of the statutes is repealed.

8 **SECTION 63.** 101.123 (5) of the statutes is repealed.

9 **SECTION 64.** 101.123 (6) of the statutes is amended to read:

10 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
11 dimensions and other characteristics of the signs used to designate smoking areas
12 required under sub. (2m). These rules may not require the use of signs that are more
13 expensive than is necessary to accomplish their purpose.

14 **SECTION 65.** 101.123 (7) of the statutes is amended to read:

15 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
16 department of administration to have the signs prepared and made available to state
17 agencies for use in state facilities that set forth the prohibition against smoking.

18 **SECTION 66.** 101.123 (8) (a) of the statutes is amended to read:

19 101.123 (8) (a) Any person who willfully violates sub. (2) (a), (am) 1., (bm), (br),
20 or (bv) after being advised by an employee of the facility that smoking in the area is
21 prohibited or any person in charge or his or her agent who willfully fails to comply
22 with sub. (5) shall forfeit not less than \$10 and not more than \$10 \$100 per violation.

23 **SECTION 67.** 101.123 (8) (b) of the statutes is repealed.

24 **SECTION 68.** 101.123 (8) (c) of the statutes is repealed.

25 **SECTION 69.** 101.123 (8) (d) of the statutes is created to read:

SECTION . CR; 101.123(4m) (title)
101.123(4m) (title) & LOCAL AUTHORITY.

for each

1 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
2 a forfeiture as follows:

- 3 1. Not less than \$50 nor more than \$100 for the first violation.
4 2. Not less than \$100 nor more than \$200 for the 2nd violation.
5 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
6 violation.

7 **SECTION 70.** 101.123 (8) (e) of the statutes is created to read:

8 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

9 **SECTION 71.** 165.60 of the statutes is amended to read:

10 **165.60 Law enforcement.** The department of justice is authorized to enforce
11 ss. 101.123 (2), ~~(5), (2m)~~, and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
12 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
13 upon sheriffs and municipal police officers in the performance of those duties. This
14 section does not deprive or relieve sheriffs, constables, and other local police officers
15 of the power and duty to enforce those sections, and those officers shall likewise
16 enforce those sections.

17 **SECTION 72.** 165.755 (1) (b) of the statutes is amended to read:

18 165.755 (1) (b) A court may not impose the crime laboratories and drug law
19 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
20 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681
21 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
22 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
23 violation, or for a violation of a state law or municipal or county ordinance involving
24 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
25 violation under s. 347.48 (2m).

1 **SECTION 73.** 302.46 (1) (a) of the statutes is amended to read:

2 302.46 **(1)** (a) If a court imposes a fine or forfeiture for a violation of state law
3 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
4 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation of s. 23.33 (4c)
5 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
6 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
7 the time of the violation, or for a violation of state laws or municipal or county
8 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
9 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
10 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
11 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
12 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
13 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
14 surcharge in proportion to the suspension.

15 **SECTION 74.** 460.01 (5) of the statutes is amended to read:

16 460.01 **(5)** "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
17 means a place, other than a residence or a hospital, that is used primarily to provide
18 medical care and treatment.

19 **SECTION 75.** 757.05 (1) (a) of the statutes is amended to read:

20 757.05 **(1)** (a) Whenever a court imposes a fine or forfeiture for a violation of
21 state law or for a violation of a municipal or county ordinance except for a violation
22 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
23 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
24 who committed the violation had a blood alcohol concentration of 0.08 or more but
25 less than 0.1 at the time of the violation, or for a violation of state laws or municipal

1 or county ordinances involving nonmoving traffic violations, violations under s.
2 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
3 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
4 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
5 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
6 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
7 in proportion to the suspension.

8 **SECTION 76.** 814.63 (1) (c) of the statutes is amended to read:

9 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
10 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, for a first violation of s. 23.33
11 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
12 committed the violation had a blood alcohol concentration of 0.08 or more but less
13 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
14 safety belt use violation under s. 347.48 (2m).

15 **SECTION 77. Initial applicability.**

16 (1) This act first applies to violations occurring on the effective date of this
17 subsection.

18 **SECTION 78. Effective date.**

19 (1) This act takes effect on the first day of the 7th month beginning after
20 publication.

21 (END)

D-Note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

INS 3-10

LRB

* LPS: Need to retype this
not checked in

1 or 301.046(3)(a) 101.123 (1) (B)
(ac) "Correctional facility" means any of the following:

2 1. A prison, as defined in s. 302.01, except a correctional institution under s.

3 301.046 (1) if the institution is the prisoner's place of residence and except a Type 2

4 prison, as defined in s. 301.01 (6).

5 2. A juvenile correctional facility, except if the facility is a private residence in

6 which the juvenile is placed and no one is employed to ensure the juvenile's

7 incarceration, or a juvenile detention facility, as defined in s. 48.02 (10r).

8 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work

9 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under

10 s. 302.30.

and no one is employed there to ensure person's incarceration.

definition established under s. 302.01
group, name

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0086/P1dn
MGG:kjf:ph

Date

exempt
exempt as

Attention: Sarah Briganti

1. I have restructured this draft for this coming session. There seemed to be some indoor areas that were overlooked in earlier drafts. I also had drafters in the education, health, and correctional fields rework some of the definitions in current law because they were awkward or overlapped.

2. The authority for "locals" to enact ordinances remains the same as in current law. See the renumbering of s. 101.123 (2) (c) to s. 101.123 (4m).

3. In this draft, smoking is prohibited in any sports arenas, whether or not it has a stationary roof, retractable roof, or no roof. See s. 101.123 (1) (hm) and (2) (e).

4. In this draft, smoking is prohibited in any open or closed conveyance that is used by the public for free or for a fee. This will include ferries, taxis, limousines, and open carriages. See s. 101.123 (1) (e) and (2) (f).

5. The term "retirement home" has been changed to "assisted living facility" and is now defined. This changes the exemption in the real world. Please review the definition in the draft at s. 101.123 (1) (ab) and call me if you have any questions.

6. In the prior bill and in this draft, smoking is prohibited at any inside location of any prison, jail or lock up. Please review the new definition of "correctional" facility found in s. 101.123 (1) (ac), and call if you have any questions.

7. Section 101.123 (2) (a) 2m. does not cover all student residence halls or dormitories. Examples of those that are excluded are fraternity and sororities and dorms or residence halls not owned by the college or university. There are such dorms and residence halls in Madison and probably elsewhere. Do you want to include all such student residential facilities? Also, it is unclear whether the rooms and suites in dorms and residence halls that are covered or are private residences. Please let me know what your intent is to the actual rooms so that I can make sure this draft achieves your intent.

8. I have added to the listing of places where smoking is specifically prohibited common areas of multi-unit residential complexes since these may not be public places and may not be "frequented" by employees. See s. 101.123 (2) (a) (8d).

7. This draft maintains current law as to smoking outside of dormitories and residence halls. See s. 101.123 (2) (bv), renumbered in the draft to s. 101.123 (2) (d) 4. Therefore, this restriction is limited to only residence halls and dormitories owned or operated by the University of Wisconsin System. OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0086/P2

MGG:kjf:ph

✓ stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to repeal* 101.123 (1) (am), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1)
2 (dg), 101.123 (1) (gm), 101.123 (1) (j), 101.123 (2) (a) 1., 101.123 (2) (a) 5.,
3 101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr), 101.123
4 (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); *to renumber* 101.123 (1) (a),
5 101.123 (1) (dm) and 101.123 (2) (c); *to renumber and amend* 101.123 (1) (h),
6 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br) and
7 101.123 (2) (bv); *to amend* 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar), 101.123
8 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g), 101.123 (1)
9 (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123 (7), 101.123
10 (8) (a), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63
11 (1) (c); *to repeal and recreate* 101.123 (2) (title), 101.123 (2) (a) 4. and 101.123
12 (2) (a) 9.; and *to create* 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj),
13 101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1) (dn), 101.123 (1) (eg), 101.123 (1)
14 (h) 2., 101.123 (1) (hm), 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 2m.,
15 101.123 (2) (a) 2r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m.,

1 101.123 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.),
2 101.123 (2) (e), 101.123 (2) (f), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i),
3 101.123 (3) (j), 101.123 (3) (k), 101.123 (3) (L), 101.123 (3m), 101.123 (4m) (title),
4 101.123 (8) (d) and 101.123 (8) (e) of the statutes; **relating to:** prohibiting
5 smoking in indoor areas, in sports arenas, and in public conveyances and
6 providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

8 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
9 hospitals but not in residential facilities including personal residences, apartments,
10 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~
11 ~~defined under s. 101.123 (1) (i) prisons, mental health institutes, as defined in s.~~
12 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
13 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
14 including, by way of illustration but not of limitation, all of the following:

15 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

16 **SECTION 3.** 101.123 (1) (ab) of the statutes is created to read:

17 101.123 (1) (ab) "Assisted living facility" means a community-based
18 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,
19 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

that the juvenile remains
in custody

- 3 - as defined in
S. 301.01(6),
a Type 2 person or

Don't need
301.048 is Type 2
Type 2 is 301.048

SECTION 4. 101.123 (1) (ac) of the statutes is created to read:

101.123 (1) (ac) "Correctional facility" means any of the following:

1. A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (3) (a) if the institution is the prisoner's place of residence and no one is employed there to ensure the person's incarceration.

2. A juvenile correctional facility, except if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure the juvenile's incarceration, or a juvenile detention facility, as defined in s. 48.02 (10).

3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a restoration camp under s. 303.07, or a lockup facility under s. 302.30.

SECTION 5. 101.123 (1) (aj) of the statutes is created to read:

101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

SECTION 6. 101.123 (1) (am) of the statutes is repealed.

SECTION 7. 101.123 (1) (ar) of the statutes is amended to read:

101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area directly adjacent to the state capitol building, as determined by rule of the department of administration. "Immediate vicinity of the state capitol" does not include any location that is more than one fathom six feet from the state capitol building.

SECTION 8. 101.123 (1) (b) of the statutes is amended to read:

101.123 (1) (b) "Inpatient health care facility" means a hospital, as defined in s. 50.33 (2), a county home established under s. 49.70, a county infirmary established

ignore highlighting

juvenile detention facility, as defined in s. 938.02 (10), or a juvenile correctional facility, as defined in s. 48.02 (10)

reforestation

a juvenile correctional facility authorized under s. 938.533 (3)(b), 938.538 (4)(b), or 938.539 (5)

1 under s. 49.72 ~~or a community-based residential facility or~~, a nursing home licensed
2 ~~under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a~~
3 Wisconsin veteran's home under s. 45.50, or a treatment facility.

4 **SECTION 9.** 101.123 (1) (bn) of the statutes is created to read:

5 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 6 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
- 7 2. A hotel, as defined in s. 254.61 (3).
- 8 3. A tourist rooming house, as defined in s. 254.61 (6).

9 **SECTION 10.** 101.123 (1) (br) of the statutes is repealed.

10 **SECTION 11.** 101.123 (1) (c) of the statutes is repealed.

11 **SECTION 12.** 101.123 (1) (d) of the statutes is amended to read:

12 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
13 ultimately controls, governs or directs the activities aboard a public conveyance or
14 ~~within a place~~ at a location where smoking is prohibited or regulated under this
15 section, ~~regardless of the person's status as owner or lessee.~~

16 **SECTION 13.** 101.123 (1) (dg) of the statutes is repealed.

17 **SECTION 14.** 101.123 (1) (dj) of the statutes is created to read:

18 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
19 any indoor area that employees normally frequent during the course of employment,
20 including an office, a work area, an elevator, an employee lounge, a restroom, a
21 conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a
22 common area, a vehicle, or an employee cafeteria.

23 **SECTION 15.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

24 **SECTION 16.** 101.123 (1) (dn) of the statutes is created to read:

1 101.123 (1) (dn) "Private club" means an organization that limits its
2 membership and is organized for a recreational, fraternal, social, patriotic, political,
3 benevolent, or athletic purpose.

4 **SECTION 17.** 101.123 (1) (e) of the statutes is amended to read:

5 101.123 (1) (e) "Public conveyance" means a mass transit vehicles vehicle as
6 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
7 or any other device by which persons are transported, for hire, on a highway or by
8 rail, water, air, or guidewire within this state, but does not include such a device
9 while providing transportation in interstate commerce.

10 **SECTION 18.** 101.123 (1) (eg) of the statutes is created to read:

11 101.123 (1) (eg) "Public place" means a place that is open to the public,
12 regardless of whether a fee is charged or a place to which the public has lawful access
13 or may be invited.

14 **SECTION 19.** 101.123 (1) (f) of the statutes is amended to read:

15 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
16 ~~with a seating capacity of more than 50 persons.~~

17 **SECTION 20.** 101.123 (1) (g) of the statutes is amended to read:

18 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
19 sales is the principal business conducted, ~~except a tavern operating under a "Class~~
20 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
21 ~~except bowling centers.~~

22 **SECTION 21.** 101.123 (1) (gm) of the statutes is repealed.

23 **SECTION 22.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
24 and amended to read:

25 101.123 (1) (h) (intro.) "Smoking" means carrying any of the following:

1 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
2 smoking equipment containing tobacco products.

3 **SECTION 23.** 101.123 (1) (h) 2. of the statutes is created to read:

4 101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
5 pipe, or other lighted smoking equipment containing tobacco products.

6 **SECTION 24.** 101.123 (1) (hm) of the statutes is created to read:

7 101.123 (1) (hm) "Sports arena" means any stadium, pavilion, gymnasium,
8 swimming pool, skating rink, bowling center, or other building where spectator
9 sporting events are held.

10 **SECTION 25.** 101.123 (1) (i) of the statutes is amended to read:

11 101.123 (1) (i) "State institution" means ~~a prison~~, a mental health institute,
12 as defined in s. 51.01 (12), a center for the developmentally disabled, as defined in
13 s. 51.01 (3), or a secure mental health facility at which persons are committed under
14 s. 980.06.

15 **SECTION 26.** 101.123 (1) (im) of the statutes is created to read:

16 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
17 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
18 beverages license.

19 **SECTION 27.** 101.123 (1) (ip) of the statutes is created to read:

20 101.123 (1) (ip) "Treatment facility" means a publicly or private operated
21 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
22 or developmentally disabled persons.

23 **SECTION 28.** 101.123 (1) (j) of the statutes is repealed.

24 **SECTION 29.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

25 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

1 **SECTION 30.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

2 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
3 any of the following indoor places:

4 **SECTION 31.** 101.123 (2) (a) 1. of the statutes is repealed.

5 **SECTION 32.** 101.123 (2) (a) 2m. of the statutes is created to read:

6 101.123 (2) (a) 2m. Residence halls or dormitories owned or operated by a
7 college or university.

8 **SECTION 33.** 101.123 (2) (a) 2r. of the statutes is created to read:

9 101.123 (2) (a) 2r. Day care centers.

10 **SECTION 34.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

11 101.123 (2) (a) 4. Theaters except as provided in sub. (3) (L).

12 **SECTION 35.** 101.123 (2) (a) 5. of the statutes is repealed.

13 **SECTION 36.** 101.123 (2) (a) 5m. of the statutes is created to read:

14 101.123 (2) (a) 5m. Correctional facilities. *Remove highlighting*

15 **SECTION 37.** 101.123 (2) (a) 5t. of the statutes is created to read:

16 101.123 (2) (a) 5t. State institutions.

17 **SECTION 38.** 101.123 (2) (a) 6. of the statutes is repealed.

18 **SECTION 39.** 101.123 (2) (a) 7m. of the statutes is created to read:

19 101.123 (2) (a) 7m. Taverns.

20 **SECTION 40.** 101.123 (2) (a) 7r. of the statutes is created to read:

21 101.123 (2) (a) 7r. Private clubs.

22 **SECTION 41.** 101.123 (2) (a) 8d. of the statutes is created to read:

23 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

24 **SECTION 42.** 101.123 (2) (a) 8g. of the statutes is created to read:

25 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

1 **SECTION 43.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

2 101.123 (2) (a) 9. Any indoor place, other than the places listed in subds. 1. to
3 8r., that is a place of employment or that is a public place.

4 **SECTION 44.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
5 and amended to read:

6 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~
7 village, or town ~~building~~ buildings.

8 **SECTION 45.** 101.123 (2) (am) of the statutes is repealed.

9 **SECTION 46.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
10 amended to read:

11 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
12 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

13 **SECTION 47.** 101.123 (2) (b) of the statutes is repealed.

14 **SECTION 48.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
15 and amended to read:

16 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
17 ~~on~~ On the premises, ~~indoors or outdoors,~~ of a day care center when children who are
18 receiving day care services are present.

19 **SECTION 49.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
20 amended to read:

21 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
22 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
23 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

24 **SECTION 50.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
25 amended to read:

*ignore
high
lighting*

1 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
2 ~~in A location that is 25 feet or less from~~ a residence hall or dormitory that is owned
3 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
4 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

5 **SECTION 51.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

6 **SECTION 52.** 101.123 (2) (d) (intro.) of the statutes is created to read:

7 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
8 locations:

9 **SECTION 53.** 101.123 (2) (e) of the statutes is created to read:

10 101.123 (2) (e) No person may smoke in a sports arena.

11 **SECTION 54.** 101.123 (2) (f) of the statutes is created to read:

12 101.123 (2) (f) No person may smoke in a public conveyance.

13 **SECTION 55.** 101.123 (2m) of the statutes is created to read:

14 101.123 (2m) **RESPONSIBILITY OF PERSONS IN CHARGE.** (a) No person in charge
15 may allow any person to smoke in violation of sub. (2) at a location that is under the
16 control or direction of the person in charge.

17 (b) No person in charge may provide matches, ashtrays, or other equipment for
18 smoking at the location where smoking is prohibited.

19 (c) A person in charge shall make reasonable efforts to prohibit persons from
20 smoking at a location where smoking is prohibited by doing all of the following:

21 1. Posting signs setting forth the prohibition and providing other appropriate
22 notification and information concerning the prohibition.

23 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
24 or private club.

1 3. Asking a person who is smoking to refrain from smoking and, if the person
2 refuses to do so, asking the person to leave the location.

3 (d) If a person refuses to leave a location after being requested to do so as
4 provided in par. (c) 3., the person in charge shall immediately notify an appropriate
5 law enforcement agency of the violation.

6 (e) A person in charge may take measures in addition to those listed in pars.
7 (b) and (c) to prevent persons from being exposed to others who are smoking or to
8 further ensure compliance with this section.

9 **SECTION 56.** 101.123 (3) (intro.) of the statutes is amended to read:

10 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against smoking~~
11 in sub. (2) (a) does not apply to the following places:

12 **SECTION 57.** 101.123 (3) (a) to (gr) of the statutes are repealed.

13 **SECTION 58.** 101.123 (3) (h) of the statutes is created to read:

14 101.123 (3) (h) A private residence.

15 **SECTION 59.** 101.123 (3) (i) of the statutes is created to read:

16 101.123 (3) (i) A room used by a person in an assisted living facility as his or
17 her residence.

18 **SECTION 60.** 101.123 (3) (j) of the statutes is created to read:

19 101.123 (3) (j) A room in an assisted living facility in which 2 or more persons
20 reside if every person who lives in that room smokes and each of those persons has
21 made a written request to the person in charge of the assisted living facility to be
22 placed in a room where smoking is allowed.

23 **SECTION 61.** 101.123 (3) (k) of the statutes is created to read:

24 101.123 (3) (k) A room in a lodging establishment that has been designated as
25 a room where smoking is allowed, as provided under sub. (3m).

1 **SECTION 62.** 101.123 (3) (L) of the statutes is created to read:

2 101.123 (3) (L) Any stage of a theater when the stage is being used for a
3 theatrical performance and the smoking is part of the performance.

4 **SECTION 63.** 101.123 (3m) of the statutes is created to read:

5 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging
6 establishment may designate not more than 25 percent of the guest rooms in the
7 lodging establishment as guest rooms in which smoking is permitted.

8 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
9 establishment may designate one guest room as a guest room in which smoking is
10 permitted.

11 **SECTION 64.** 101.123 (4) of the statutes is repealed.

12 **SECTION 65.** 101.123 (4m) (title) of the statutes is created to read:

13 101.123 (4m) (title) LOCAL AUTHORITY.

14 **SECTION 66.** 101.123 (5) of the statutes is repealed.

15 **SECTION 67.** 101.123 (6) of the statutes is amended to read:

16 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
17 dimensions and other characteristics of the signs used to designate smoking areas
18 required under sub. (2m). These rules may not require the use of signs that are more
19 expensive than is necessary to accomplish their purpose.

20 **SECTION 68.** 101.123 (7) of the statutes is amended to read:

21 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
22 department of administration to have the signs prepared and made available to state
23 agencies for use in state facilities that set forth the prohibition against smoking.

24 **SECTION 69.** 101.123 (8) (a) of the statutes is amended to read:

1 101.123 (8) (a) Any person who ~~willfully~~ violates sub. (2) ~~(a), (am) 1., (bm), (br),~~
2 ~~or (bv) after being advised by an employee of the facility that smoking in the area is~~
3 ~~prohibited or any person in charge or his or her agent who willfully fails to comply~~
4 ~~with sub. (5) shall forfeit not less than \$10 and not more than \$10 \$100 for each~~
5 ~~violation.~~

6 **SECTION 70.** 101.123 (8) (b) of the statutes is repealed.

7 **SECTION 71.** 101.123 (8) (c) of the statutes is repealed.

8 **SECTION 72.** 101.123 (8) (d) of the statutes is created to read:

9 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
10 a forfeiture as follows:

- 11 1. Not less than \$50 nor more than \$100 for the first violation.
- 12 2. Not less than \$100 nor more than \$200 for the 2nd violation.
- 13 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
14 violation.

15 **SECTION 73.** 101.123 (8) (e) of the statutes is created to read:

16 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

17 **SECTION 74.** 165.60 of the statutes is amended to read:

18 **165.60 Law enforcement.** The department of justice is authorized to enforce
19 ss. 101.123 (2), ~~(5), (2m)~~, and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
20 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
21 upon sheriffs and municipal police officers in the performance of those duties. This
22 section does not deprive or relieve sheriffs, constables, and other local police officers
23 of the power and duty to enforce those sections, and those officers shall likewise
24 enforce those sections.

25 **SECTION 75.** 165.755 (1) (b) of the statutes is amended to read:

1 165.755 (1) (b) A court may not impose the crime laboratories and drug law
2 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
3 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681
4 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
5 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
6 violation, or for a violation of a state law or municipal or county ordinance involving
7 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
8 violation under s. 347.48 (2m).

9 **SECTION 76.** 302.46 (1) (a) of the statutes is amended to read:

10 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
11 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
12 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)
13 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
14 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
15 the time of the violation, or for a violation of state laws or municipal or county
16 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
17 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
18 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
19 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
20 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
21 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
22 surcharge in proportion to the suspension.

23 **SECTION 77.** 460.01 (5) of the statutes is amended to read:

1 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
2 means a place, other than a residence or a hospital, that is used primarily to provide
3 medical care and treatment.

4 **SECTION 78.** 757.05 (1) (a) of the statutes is amended to read:

5 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
6 state law or for a violation of a municipal or county ordinance except for a violation
7 of s. 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), or for a first violation
8 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
9 who committed the violation had a blood alcohol concentration of 0.08 or more but
10 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
11 or county ordinances involving nonmoving traffic violations, violations under s.
12 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
13 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
14 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
15 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
16 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
17 in proportion to the suspension.

18 **SECTION 79.** 814.63 (1) (c) of the statutes is amended to read:

19 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
20 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), for a first violation of s. 23.33
21 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
22 committed the violation had a blood alcohol concentration of 0.08 or more but less
23 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
24 safety belt use violation under s. 347.48 (2m).

25 **SECTION 80. Initial applicability.**

6 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/P2dn

MGG:kjf:ph

13
November 11, 2008

Attention: Sarah Briganti

1. I have restructured this draft for this coming session. There seemed to be some indoor areas that were overlooked in earlier drafts. I also had drafters in the education, health, and correctional fields rework some of the definitions in current law because they were awkward or overlapped.
2. The authority for "locals" to enact ordinances remains the same as in current law. See the renumbering of s. 101.123 (2) (c) to s. 101.123 (4m).
3. In this draft, smoking is prohibited in any sports arena, whether or not it has a stationary roof, retractable roof, or no roof. See s. 101.123 (1) (hm) and (2) (e).
4. In this draft, smoking is prohibited in any open or closed conveyance that is used by the public for free or for a fee. This will include ferries, taxis, limousines, and open carriages. See s. 101.123 (1) (e) and (2) (f).
5. The term "retirement home" has been changed to "assisted living facility" and is now defined. This changes the exemption in the real world. Please review the definition in the draft at s. 101.123 (1) (ab) and call me if you have any questions.
6. In the prior bill and in this draft, smoking is prohibited at any inside location of any prison, jail, or lock up. Please review the new definition of "correctional" facility found in s. 101.123 (1) (ac), and call if you have any questions.
7. Section 101.123 (2) (a) 2m. does not cover all student residence halls or dormitories. Examples of those that are excluded are fraternity and sororities and dorms or residence halls not owned by the college or university. There are such dorms and residence halls in Madison and probably elsewhere. Do you want to include all such student residential facilities? Also, it is unclear whether the rooms and suites in dorms and residence halls are covered or are exempt as private residences. Please let me know what your intent is to the actual rooms so that I can make sure this draft achieves your intent.
8. I have added to the listing of places where smoking is specifically prohibited common areas of multiunit residential complexes since these may not be public places and may not be "frequented" by employees. See s.101.123 (2) (a) 8d.

7. This draft maintains current law as to smoking outside of dormitories and residence halls. See. s. 101.123 (2) (bv), renumbered in the draft to s. 101.123 (2) (d) 4. Therefore, this restriction is limited to only residence halls and dormitories owned or operated by the University of Wisconsin System. OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/P2dn

MGG:kjf:ph

November 13, 2008

Attention: Sarah Briganti

1. I have restructured this draft for this coming session. There seemed to be some indoor areas that were overlooked in earlier drafts. I also had drafters in the education, health, and correctional fields rework some of the definitions in current law because they were awkward or overlapped.
2. The authority for "locals" to enact ordinances remains the same as in current law. See the renumbering of s. 101.123 (2) (c) to s. 101.123 (4m).
3. In this draft, smoking is prohibited in any sports arena, whether or not it has a stationary roof, retractable roof, or no roof. See s. 101.123 (1) (hm) and (2) (e).
4. In this draft, smoking is prohibited in any open or closed conveyance that is used by the public for free or for a fee. This will include ferries, taxis, limousines, and open carriages. See s. 101.123 (1) (e) and (2) (f).
5. The term "retirement home" has been changed to "assisted living facility" and is now defined. This changes the exemption in the real world. Please review the definition in the draft at s. 101.123 (1) (ab) and call me if you have any questions.
6. In the prior bill and in this draft, smoking is prohibited at any inside location of any prison, jail, or lock up. Please review the new definition of "correctional" facility found in s. 101.123 (1) (ac), and call if you have any questions.
7. Section 101.123 (2) (a) 2m. does not cover all student residence halls or dormitories. Examples of those that are excluded are fraternity and sororities and dorms or residence halls not owned by the college or university. There are such dorms and residence halls in Madison and probably elsewhere. Do you want to include all such student residential facilities? Also, it is unclear whether the rooms and suites in dorms and residence halls are covered or are exempt as private residences. Please let me know what your intent is to the actual rooms so that I can make sure this draft achieves your intent.
8. I have added to the listing of places where smoking is specifically prohibited common areas of multiunit residential complexes since these may not be public places and may not be "frequented" by employees. See s.101.123 (2) (a) 8d.

7. This draft maintains current law as to smoking outside of dormitories and residence halls. See. s. 101.123 (2) (bv), renumbered in the draft to s. 101.123 (2) (d) 4. Therefore, this restriction is limited to only residence halls and dormitories owned or operated by the University of Wisconsin System. OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

283-1821

Gibson-Glass, Mary

From: Briganti, Sarah
Sent: Friday, December 19, 2008 12:09 PM
To: Gibson-Glass, Mary
Subject: Request for changes to LRB 0086/P2

2258-8555

845 8392 5529

Mary,

Thank you for your continued work on the statewide smoking ban. We appreciate your counsel on this issue.

After reviewing the draft both internally and with interested parties, Senator Risser is requesting a few changes to the draft as it currently stands. I have attached those changes below.

I am at home with the snow today, but will be keeping tabs on email. Hoping to be back in as normal on Monday. Please let me know if you have any questions or concerns.

Thanks!
Sarah

Changes to LRB 0086/P2
19 December 2008

✓ 1) Implementation date: Change implementation from 7 months after publication to 60 days after publication.

2) Definition of Enclosed Areas: Include the following definition.

"An enclosed area is an area having a roof or overhead covering and walls on more than two sides. The opening of windows or doors, or the temporary removal of wall panels does not convert an indoor area into an outdoor area. A surface covered by 75% or more of standard window screen is not considered a wall."

3) Perimeter issue: prohibit outdoor smoking as follows: *that open*
"No smoking within a reasonable distance of operable doors, windows and air intakes." *D-note*

4) Penalty structure- Individuals *smoked*
"For individuals violating this law, the penalty shall be as follows First offense, a forfeiture of not less than \$25, but not more than \$50 Second offense, a forfeiture of not less than \$50, but not more than \$100 Third or greater offense, a forfeiture of not less than \$100, but not more than \$250."

✓ 5) Theatre exemption: Eliminate
~~Eliminate page 11, lines 7 & 8, which creates an exemption for smoking during stage performances.~~

*Sarah called
Do not do this*



State of Wisconsin
2009 - 2010 LEGISLATURE

P3
LRB-0086/P2
MGG:kjf:ph

in 1/19 (D-N)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today please

Regen

1 AN ACT *to repeal* 101.123 (1) (am), 101.123 (1) (br), 101.123 (1) (c), 101.123 (1)
2 (dg), 101.123 (1) (gm), 101.123 (1) (j), 101.123 (2) (a) 1., 101.123 (2) (a) 5.,
3 101.123 (2) (a) 6., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr), 101.123
4 (4), 101.123 (5), 101.123 (8) (b) and 101.123 (8) (c); *to renumber* 101.123 (1) (a),
5 101.123 (1) (dm) and 101.123 (2) (c); *to renumber and amend* 101.123 (1) (h),
6 101.123 (2) (a) 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br) and
7 101.123 (2) (bv); *to amend* 77.52 (2) (ag) 39. (intro.), 101.123 (1) (ar), 101.123
8 (1) (b), 101.123 (1) (d), 101.123 (1) (e), 101.123 (1) (f), 101.123 (1) (g), 101.123 (1)
9 (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 101.123 (6), 101.123 (7), 101.123
10 (8) (a), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63
11 (1) (c); *to repeal and recreate* 101.123 (2) (title), 101.123 (2) (a) 4. and 101.123
12 (2) (a) 9.; and *to create* 101.123 (1) (ab), 101.123 (1) (ac), 101.123 (1) (aj),
13 101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1) (dn), 101.123 (1) (eg), 101.123 (1)
14 (h) 2., 101.123 (1) (hm), 101.123 (1) (im), 101.123 (1) (ip), 101.123 (2) (a) 2m.,
15 101.123 (2) (a) 2r., 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m.,

101.123 (2) (a) 7r., 101.123 (2) (a) 8d., 101.123 (2) (a) 8g., 101.123 (2) (d) (intro.),
101.123 (2) (e), 101.123 (2) (f), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i),
101.123 (3) (j), 101.123 (3) (k), 101.123 (3) (L), 101.123 (3m), 101.123 (4m) (title),
101.123 (8) (d) and 101.123 (8) (e) of the statutes; **relating to:** prohibiting
smoking in indoor areas, in sports arenas, and in public conveyances and
providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state and local** fiscal estimate, which will be
printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:
77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
hospitals but not in residential facilities including personal residences, apartments,
long-term care facilities, as defined under s. 16.009 (1) (em), state institutions, as
defined under s. 101.123 (1) (i) prisons, mental health institutes, as defined in s.
51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
including, by way of illustration but not of limitation, all of the following:

SECTION 2. 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

SECTION 3. 101.123 (1) (ab) of the statutes is created to read:

101.123 (1) (ab) "Assisted living facility" means a community-based
residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,
as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

1 **SECTION 4.** 101.123 (1) (ac) of the statutes is created to read:

2 101.123 (1) (ac) "Correctional facility" means any of the following:

3 1. A state prison, as defined or named in s. 302.01, except a correctional
4 institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner's
5 place of residence and no one is employed there to ensure the prisoner's
6 incarceration.

7 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile
8 correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional
9 facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility
10 is a private residence in which the juvenile is placed and no one is employed there
11 to ensure that the juvenile remains in custody.

12 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work
13 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under
14 s. 302.30.

15 **SECTION 5.** 101.123 (1) (aj) of the statutes is created to read:

16 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
17 occupation, or process of manufacture or any method of carrying on such trade,
18 occupation, or process of manufacture in which any person may be engaged.

19 **SECTION 6.** 101.123 (1) (am) of the statutes is repealed. ← INSERT 3-11

20 **SECTION 7.** 101.123 (1) (ar) of the statutes is amended to read:

21 101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area
22 directly adjacent to the state capitol building, as determined by rule of the
23 department of administration. "Immediate vicinity of the state capitol" does not
24 include any location that is more than ~~one fathom~~ six feet from the state capitol
25 building.

1 **SECTION 8.** 101.123 (1) (b) of the statutes is amended to read:

2 101.123 (1) (b) "Inpatient health care facility" means a hospital, as defined in
3 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
4 under s. 49.72 or a community-based residential facility or, a nursing home licensed
5 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a
6 Wisconsin veteran's home under s. 45.50, or a treatment facility.

7 **SECTION 9.** 101.123 (1) (bn) of the statutes is created to read:

8 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 9 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
10 2. A hotel, as defined in s. 254.61 (3).
11 3. A tourist rooming house, as defined in s. 254.61 (6).

12 **SECTION 10.** 101.123 (1) (br) of the statutes is repealed.

13 **SECTION 11.** 101.123 (1) (c) of the statutes is repealed.

14 **SECTION 12.** 101.123 (1) (d) of the statutes is amended to read:

15 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
16 ultimately controls, governs or directs the activities aboard a public conveyance or
17 ~~within a place~~ at a location where smoking is prohibited or regulated under this
18 section, ~~regardless of the person's status as owner or lessee.~~

19 **SECTION 13.** 101.123 (1) (dg) of the statutes is repealed.

20 **SECTION 14.** 101.123 (1) (dj) of the statutes is created to read:

21 *enclosed* 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
22 *enclosed place* any ~~indoor area~~ that employees normally frequent during the course of employment,
23 including an office, a work area, an elevator, an employee lounge, a restroom, a
24 conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a
25 common area, a vehicle, or an employee cafeteria.

SECTION . RP; 101.123 (1) (bg)
SECTION . RP; 101.123 (1) (bm)

amended place = a facility used by

1 **SECTION 15.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

2 **SECTION 16.** 101.123 (1) (dn) of the statutes is created to read:

3 101.123 (1) (dn) "Private club" means an organization that limits its
4 membership and is organized for a recreational, fraternal, social, patriotic, political,
5 benevolent, or athletic purpose.

6 **SECTION 17.** 101.123 (1) (e) of the statutes is amended to read:

7 101.123 (1) (e) "Public conveyance" means a mass transit vehicles vehicle as
8 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
9 or any other device by which persons are transported, for hire, on a highway or by
10 rail, water, air, or guidewire within this state, but does not include such a device
11 while providing transportation in interstate commerce.

12 **SECTION 18.** 101.123 (1) (eg) of the statutes is created to read:

13 101.123 (1) (eg) "Public place" means *any place enclosed & enclosed* a place that is open to the public,
14 regardless of whether a fee is charged or a place to which the public has lawful access
15 or may be invited.

16 **SECTION 19.** 101.123 (1) (f) of the statutes is amended to read:

17 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
18 with a seating capacity of more than 50 persons.

19 **SECTION 20.** 101.123 (1) (g) of the statutes is amended to read:

20 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
21 sales is the principal business conducted, ~~except a tavern operating under a "Class~~
22 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
23 ~~except bowling centers.~~

24 **SECTION 21.** 101.123 (1) (gm) of the statutes is repealed.

1 **SECTION 22.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
2 and amended to read:

3 101.123 (1) (h) (intro.) "Smoking" means ~~carrying~~ any of the following:

4 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
5 smoking equipment containing tobacco products.

6 **SECTION 23.** 101.123 (1) (h) 2. of the statutes is created to read:

7 101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
8 pipe, or other lighted smoking equipment containing tobacco products.

9 **SECTION 24.** 101.123 (1) (hm) of the statutes is created to read:

10 101.123 (1) (hm) "Sports arena" means any stadium, pavilion, gymnasium,
11 swimming pool, skating rink, bowling center, or other building where spectator
12 sporting events are held.

13 **SECTION 25.** 101.123 (1) (i) of the statutes is amended to read:

14 101.123 (1) (i) "State institution" means ~~a prison~~, a mental health institute,
15 as defined in s. 51.01 (12), ~~a~~ ^{or} a center for the developmentally disabled, as defined in
16 s. 51.01 (3), or a secure mental health facility at which persons are committed under
17 s. 980.06. ^{insert (6-17)}

18 **SECTION 26.** 101.123 (1) (im) of the statutes is created to read:

19 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
20 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
21 beverages license.

22 **SECTION 27.** 101.123 (1) (ip) of the statutes is created to read:

23 101.123 (1) (ip) "Treatment facility" means a publicly or private operated
24 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
25 or developmentally disabled persons.

~~Section 28. 101.123 (1) (j) of the statutes is repealed.~~ *INSERT 7*

SECTION 29. 101.123 (2) (title) of the statutes is repealed and recreated to read:

101.123 (2) (title) PROHIBITION AGAINST SMOKING.

SECTION 30. 101.123 (2) (a) (intro.) of the statutes is amended to read:

101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in

~~any~~ of the following indoor places:

SECTION 31. 101.123 (2) (a) 1. of the statutes is repealed. *← INSERT 7-6*

SECTION 32. 101.123 (2) (a) ^{1m}2m. of the statutes is created to read:

101.123 (2) (a) ^{1m}2m. Residence halls or dormitories owned or operated by a college or university.

SECTION 33. 101.123 (2) (a) ^{1r}2r. of the statutes is created to read:

101.123 (2) (a) ^{1r}2r. Day care centers.

SECTION 34. 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

101.123 (2) (a) 4. Theaters except as provided in sub. (3) (L).

SECTION 35. 101.123 (2) (a) 5. of the statutes is repealed.

SECTION 36. 101.123 (2) (a) 5m. of the statutes is created to read:

101.123 (2) (a) 5m. Correctional facilities.

SECTION 37. 101.123 (2) (a) 5t. of the statutes is created to read:

101.123 (2) (a) 5t. State institutions.

SECTION 38. 101.123 (2) (a) 6. of the statutes is repealed.

SECTION 39. 101.123 (2) (a) 7m. of the statutes is created to read:

101.123 (2) (a) 7m. Taverns.

SECTION 40. 101.123 (2) (a) 7r. of the statutes is created to read:

101.123 (2) (a) 7r. Private clubs.

SECTION 41. 101.123 (2) (a) 8d. of the statutes is created to read:

SECTION , CR; 101.123 (2) (a) 1g.

101.123 (2) (a) 1g. The state capitol.

1 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

2 **SECTION 42.** 101.123 (2) (a) 8g. of the statutes is created to read:

3 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

4 **SECTION 43.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

5 101.123 (2) (a) 9. *All enclosed spaces* Any *indoor* place, other than the *places* listed in subds. 1. to
6 8r., that is *are places* a place of employment or that *that are* is a public place. *s*

7 **SECTION 44.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
8 and amended to read:

9 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~
10 ~~village, or town building~~ buildings.

11 **SECTION 45.** 101.123 (2) (am) of the statutes is repealed.

12 **SECTION 46.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
13 amended to read:

14 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
15 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

16 **SECTION 47.** 101.123 (2) (b) of the statutes is repealed.

17 **SECTION 48.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
18 and amended to read:

19 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
20 ~~on the premises, indoors or outdoors,~~ *Anywhere on the* of a day care center when children who are
21 receiving day care services are present.

22 **SECTION 49.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
23 amended to read:

When such children are not present, the prohibition under subd. 5, applies.

Any where on

1 101.123 (2) (d) 3. Notwithstanding par. (a) and sub. (3), no person may smoke
2 in any enclosed, indoor area of a Type 1 juvenile correctional facility or on ~~On~~ the
3 grounds of a Type 1 juvenile correctional facility ~~as defined in s. 938.02(19).~~

4 SECTION 50. 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
5 amended to read:

6 101.123 (2) (d) 4. Notwithstanding par. (a) and sub. (3), no person may smoke
7 in A location that is 25 feet or less from a residence hall or dormitory that is owned
8 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
9 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

10 SECTION 51. 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

11 SECTION 52. 101.123 (2) (d) (intro.) of the statutes is created to read:

12 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
13 locations:

14 SECTION 53. 101.123 (2) (e) of the statutes is created to read:

15 101.123 (2) (e) No person may smoke in a sports arena.

16 SECTION 54. 101.123 (2) (f) of the statutes is created to read:

17 101.123 (2) (f) No person may smoke in a public conveyance.

18 SECTION 55. 101.123 (2m) of the statutes is created to read:

19 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
20 may allow any person to smoke in violation of sub. (2) at a location that is under the
21 control or direction of the person in charge.

22 (b) No person in charge may provide matches, ashtrays, or other equipment for
23 smoking at the location where smoking is prohibited.

24 (c) A person in charge shall make reasonable efforts to prohibit persons from
25 smoking at a location where smoking is prohibited by doing all of the following:

← INSERT
9-13

1 1. Posting signs setting forth the prohibition and providing other appropriate
2 notification and information concerning the prohibition.

3 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
4 or private club.

5 3. Asking a person who is smoking to refrain from smoking and, if the person
6 refuses to do so, asking the person to leave the location.

7 (d) If a person refuses to leave a location after being requested to do so as
8 provided in par. (c) 3., the person in charge shall immediately notify an appropriate
9 law enforcement agency of the violation.

10 (e) A person in charge may take measures in addition to those listed in pars.
11 (b) and (c) to prevent persons from being exposed to others who are smoking or to
12 further ensure compliance with this section.

13 **SECTION 56.** 101.123 (3) (intro.) of the statutes is amended to read:

14 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking
15 in sub. (2) (a) does not apply to the following places:

16 **SECTION 57.** 101.123 (3) (a) to (gr) of the statutes are repealed.

17 **SECTION 58.** 101.123 (3) (h) of the statutes is created to read:

18 101.123 (3) (h) A private residence.

19 **SECTION 59.** 101.123 (3) (i) of the statutes is created to read:

20 101.123 (3) (i) A room used by a person in an assisted living facility as his or
21 her residence.

22 **SECTION 60.** 101.123 (3) (j) of the statutes is created to read:

23 101.123 (3) (j) A room in an assisted living facility in which 2 or more persons
24 reside if every person who lives in that room smokes and each of those persons has

1 made a written request to the person in charge of the assisted living facility to be
2 placed in a room where smoking is allowed.

3 **SECTION 61.** 101.123 (3) (k) of the statutes is created to read:

4 101.123 (3) (k) A room in a lodging establishment that has been designated as
5 a room where smoking is allowed, as provided under sub. (3m).

6 **SECTION 62.** 101.123 (3) (L) of the statutes is created to read:

7 101.123 (3) (L) Any stage of a theater when the stage is being used for a
8 theatrical performance and the smoking is part of the performance.

9 **SECTION 63.** 101.123 (3m) of the statutes is created to read:

10 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging
11 establishment may designate not more than 25 percent of the guest rooms in the
12 lodging establishment as guest rooms in which smoking is permitted.

13 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
14 establishment may designate one guest room as a guest room in which smoking is
15 permitted.

16 **SECTION 64.** 101.123 (4) of the statutes is repealed.

17 **SECTION 65.** 101.123 (4m) (title) of the statutes is created to read:

18 101.123 (4m) (title) LOCAL AUTHORITY.

19 **SECTION 66.** 101.123 (5) of the statutes is repealed.

20 **SECTION 67.** 101.123 (6) of the statutes is amended to read:

21 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
22 dimensions and other characteristics of the signs used to designate smoking areas
23 required under sub. (2m). These rules may not require the use of signs that are more
24 expensive than is necessary to accomplish their purpose.

25 **SECTION 68.** 101.123 (7) of the statutes is amended to read:

1 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
2 department of administration to have the signs prepared and made available to state
3 agencies for use in state facilities that set forth the prohibition against smoking.

4 **SECTION 69.** 101.123 (8) ~~(a)~~ ^{repealed} of the statutes is amended to read:

5 101.123 (8) (a) Any person who willfully violates sub. (2) (a), ~~(am) 1., (bm), (br),~~
6 ~~or (bv) after being advised by an employee of the facility that smoking in the area is~~
7 ~~prohibited or any person in charge or his or her agent who willfully fails to comply~~
8 ~~with sub. (5) shall forfeit not less than \$10 and not more than \$10 \$100 for each~~
9 ~~violation.~~

— INSERT 12-9

10 **SECTION 70.** 101.123 (8) (b) of the statutes is repealed.

11 **SECTION 71.** 101.123 (8) (c) of the statutes is repealed.

12 **SECTION 72.** 101.123 (8) (d) of the statutes is created to read:

13 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
14 a forfeiture as follows:

15 1. Not less than \$50 nor more than \$100 for the first violation.

16 2. Not less than \$100 nor more than \$200 for the 2nd violation.

17 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
18 violation.

19 **SECTION 73.** 101.123 (8) (e) of the statutes is created to read:

20 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

21 **SECTION 74.** 165.60 of the statutes is amended to read:

22 **165.60 Law enforcement.** The department of justice is authorized to enforce
23 ss. 101.123 (2), ~~(5), (2m),~~ and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
24 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
25 upon sheriffs and municipal police officers in the performance of those duties. This

1 section does not deprive or relieve sheriffs, constables, and other local police officers
2 of the power and duty to enforce those sections, and those officers shall likewise
3 enforce those sections.

4 **SECTION 75.** 165.755 (1) (b) of the statutes is amended to read:

5 165.755 (1) (b) A court may not impose the crime laboratories and drug law
6 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
7 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681
8 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
9 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
10 violation, or for a violation of a state law or municipal or county ordinance involving
11 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
12 violation under s. 347.48 (2m).

13 **SECTION 76.** 302.46 (1) (a) of the statutes is amended to read:

14 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
15 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
16 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)
17 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
18 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
19 the time of the violation, or for a violation of state laws or municipal or county
20 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
21 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
22 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
23 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
24 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a

1 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
2 surcharge in proportion to the suspension.

3 **SECTION 77.** 460.01 (5) of the statutes is amended to read:

4 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
5 means a place, other than a residence or a hospital, that is used primarily to provide
6 medical care and treatment.

7 **SECTION 78.** 757.05 (1) (a) of the statutes is amended to read:

8 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
9 state law or for a violation of a municipal or county ordinance except for a violation
10 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
11 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
12 who committed the violation had a blood alcohol concentration of 0.08 or more but
13 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
14 or county ordinances involving nonmoving traffic violations, violations under s.
15 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
16 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
17 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
18 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
19 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
20 in proportion to the suspension.

21 **SECTION 79.** 814.63 (1) (c) of the statutes is amended to read:

22 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
23 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, for a first violation of s. 23.33
24 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
25 committed the violation had a blood alcohol concentration of 0.08 or more but less

1 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
2 safety belt use violation under s. 347.48 (2m).

3 **SECTION 80. Initial applicability.**

4 (1) This act first applies to violations occurring on the effective date of this
5 subsection.

6 **SECTION 81. Effective date.**

7 (1) This act takes effect on the first day of the ^{3rd} ~~7th~~ month beginning after
8 publication.

9 (END)

D-Note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/P3ins

MGG:.....

LPS: check
spacing please

1

Insert ANL

Prohibition against smoking indoors

Current law prohibits smoking in mass transit vehicles and specific indoor enclosed, indoor locations, including the following:

1. Inpatient health care facilities, such as community based-residential facilities and nursing homes.
2. Prisons and jails.
3. Retail establishments.
4. Restaurants.
5. Governmental buildings.

Except for hospitals, school buses, day care centers where children are present, and a few other places, a smoking area may be designated by the person who is in charge of that location. For example, the person in charge of a business is the owner of the business, the person in charge of a prison is the state secretary of corrections.

Under the bill, smoking areas at indoor locations may no longer be designated resulting in a complete ban on indoor smoking at those locations with exceptions for private residences, a limited number of designated rooms in lodging establishments, and certain residence rooms in assisted living facilities. In addition to the specific indoor locations listed under current law, the bill prohibits smoking in any public place or place of employment. The bill defines "a place of employment" to be any indoor place that employees normally frequent during the course of employment, such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The bill defines a "public place" to be a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited. The bill also defines an "enclosed area" for purposes of determining at what locations smoking is prohibiting. Under the bill, an enclosed area must have a roof and at least two solid walls.

Current law provides exemptions from the prohibition against smoking for bowling centers, taverns, halls used for private functions, for rooms in which the main occupants are smokers, and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exemptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license issued by a municipality. This bill prohibits smoking in any tavern. The bill also specifically prohibits smoking in private clubs.

In addition, the

Outdoor smoking

Under current law, smoking is prohibited outside in limited instances. These include within a certain distance of the state capitol building, dormitories that are owned or operated by the University of Wisconsin, and day care centers where children are present. This bill makes no changes to these specific prohibitions, and adds a general prohibition against smoking outside within less than a reasonable distance from any of the entrance into a building, an openable window, or a ventilation opening that draws air inside.

what
5/27
no
change

Local ordinances and enforcement

Current law does not limit the authority of any county, city, village or town to enact smoking ordinances that protect the public's health and comfort. This bill makes no change in this provision.

This bill requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes forfeitures on persons in charge who fail to take these measures.

anal space

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

1 **Insert 3-11**

2 **SECTION 1.** 101.123 (1) (ak) of the statutes is created to read:

3 101.123 (1) (ak) "Enclosed place" means a structure or area that has all of the
4 following:

substantial

5 1. A roof or overhead covering.

6 2. Two or more ^{solid} complete walls, ^{regardless of whether the types} but the walls may be ones that may be
7 removed and replaced on a temporary basis.

are

8 **Insert 7-1**

Insert 6-17 (id)

9 **SECTION 2.** 101.123 (1) (k) of the statutes is created to read:

10 101.123 (1) (k) "Wall" ^{solid} does not include a wall that has an entrance, window,
11 opening, or screened area that is 75 percent or more of the square area of the wall.

the square area of which

12 **Insert 7-6**

INSA

13 **SECTION 3.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

1 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
2 any of the following enclosed places:

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a).

3 **Insert 9-13**

4 **SECTION 4.** 101.123 (2) (d) 5. of the statutes is created to read:

5 101.123 (2) (d) 5. At a location that is less ^{than} a reasonable distance from any of the
6 following:

7 a. An operable entrance to or from an enclosed place listed in sub. (2) (a) 3. to
8 9. or a sports arena.

9 b. An openable window that is part of an enclosed place listed in sub. (2) (a) 3.
10 to 9. or a sports arena.

11 c. An opening through which air enters, for the purpose of ventilation into an
12 enclosed place listed in sub. (2) (a) 3. to 9. or a sports arena.

13 **SECTION 5.** 101.123 (2) (dm) of the statutes is created to read:

14 101.123 (2) (dm) Paragraph (d) 3. applies in lieu of par. (d) 5. to smoking outside
15 a Type 1 juvenile correctional facility.

16 **Insert 12-9**

17 **SECTION 6.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

18 101.123 (8) (a) Any person in charge who violates sub. (2) ~~or (2)~~ shall be subject
19 to a forfeiture as follows:

20 1. Not less than \$25 nor more than \$50 for the first violation.

21 2. Not less than \$50 nor more than \$100 for the 2nd violation.

22 3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent
23 violation.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/P3dn

MGG: *gf*

Date

Attention: Sarah Briganti

1. The provision regarding outdoor smoking "within less than a reasonable distance" may be unconstitutionally vague. ~~Due process requires that a law be reasonably definite as to what persons and conduct are covered as well as the punishment for any violation.~~ Due process requires that a law be reasonably definite as to what persons and conduct are covered as well as the punishment for any violation and should not be susceptible to arbitrary and discriminatory enforcement. Due to the priority being given this draft, I have not had time to research this in depth. However, if you would like me to look into this further as you review the draft, please let me know. Also, how is a person outside to know where a ventilation duct is or whether the nearby window is openable?

2. If your intent is to ban smoking in bus shelters, I think the draft should include that specific prohibition. There may be some shelters that do not fit the definition of "enclosed place".

+
+
X 3. In reviewing this draft during the redrafting process, I note that no smoking will be allowed anywhere in the ~~facilities~~ ^{ies} that are included in the definition in this draft under "inpatient health care facilities". These include county homes, county infirmaries, nursing homes, and mental health and AODA treatment facilities. See s. 101.123 (1) (b) and (ip). In other words, to be able to smoke in one's room, it must be an "assisted living facility" instead of an "inpatient health care facility". OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1646/?ins

LRS: you may
have to
type this.

INSA

101.123(1)(k) (id)

"Substantial wall" means a wall where at least 25 percent of the surface area of the wall is not part of an opening that may be used to allow air in from the outside.

with the surface area that of which that allows outside air to enter may not exceed 75 percent.

"Substantial wall" means that is at least 25% impermeable and unopenable to the outside.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0086/P3dn

MGG:kjf:md

January 20, 2009

Attention: Sarah Briganti

1. The provision regarding outdoor smoking "within less than a reasonable distance" may be unconstitutionally vague. Due process requires that a law be reasonably definite as to what persons and conduct are covered as well as the punishment for any violation and should not be susceptible to arbitrary and discriminatory enforcement. Due to the priority being given this draft, I have not had time to research this in depth. However, if you would like me to look into this further as you review the draft, please let me know. Also, how is a person outside to know where a ventilation duct is or whether the nearby window is openable?
2. If your intent is to ban smoking in bus shelters, I think the draft should include that specific prohibition. There may be some shelters that do not fit the definition of "enclosed place."
3. In reviewing this draft during the redrafting process, I note that no smoking will be allowed anywhere in the entities that are included in the definition in this draft under "inpatient health care facilities." These include county homes, county infirmaries, nursing homes, and mental health and AODA treatment facilities. See s. 101.123 (1) (b) and (ip). In other words, to be able to smoke in one's room, it must be an "assisted living facility" instead of an "inpatient health care facility." OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215